

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
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U.S. DISTRICT COURT E.D.N.Y.

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ANSELMO GOMEZ,

BROOKLYN OFFICE

Movant,

MEMORANDUM AND ORDER

-against-

11-CV-6348 (SLT)

UNITED STATES OF AMERICA,

Respondent.

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TOWNES, United States District Judge:

In 2008, movant Anselmo Gomez pled guilty pursuant to a plea agreement in which he agreed “not to file an appeal or otherwise challenge by petition pursuant to 28 U.S.C. § 2255 or any other provision,” his conviction or sentence if the Court imposed a term of imprisonment of 121 months or less. Although movant was subsequently sentenced to 121 months’ imprisonment, he not only unsuccessfully appealed but subsequently moved pursuant to 28 U.S.C. § 2255 to vacate, set aside or correct his sentence. In a memorandum and order dated May 18, 2016 (the “First M&O”), the Court denied that motion on the ground that the waiver of appeal was enforceable and precluded the motion. The Court did not expressly address the question of whether a certificate of appealability should issue.

In early June 2016, movant filed a motion for reconsideration of the First M&O pursuant to Rules 59(e) and 60(b) of the Federal Rules of Civil Procedure. That motion raised an entirely new challenge to movant’s conviction and did not mention the Court’s failure to either issue or deny a certificate of appealability, as required by Rule 11(a) of the Rules Governing Section 2255 Proceedings. In a memorandum and order dated July 21, 2016 (the “Second M&O”), the Court denied the motion for reconsideration without addressing the certificate of appealability issue.

In early August 2016, movant filed a notice of appeal, seeking to appeal the denial of his motion for reconsideration. To the extent that said notice of appeal can be read as implicitly requesting a certificate of appealability from this Court and to the extent that this Court has jurisdiction to consider such a request, the Court declines to issue a certificate of appealability with respect to either the First or Second M&O. Movant has not made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

SO ORDERED.

/s/ *Sandra L. Townes*

SANDRA L. TOWNES
United States District Judge

Dated: November 2, 2016
Brooklyn, New York